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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/990,262	11/23/2001	Junji Shinohara	2038-280	2417

7590

08/02/2004

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EXAMINER

REICHLER, KARIN M

ART UNIT	PAPER NUMBER
3761	

DATE MAILED: 08/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Advisory Action</b>	<b>Application No.</b> 09/990,262	<b>Applicant(s)</b> SHINOHARA ET AL.	
	<b>Examiner</b> Karin M. Reichle	<b>Art Unit</b> 3761	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 02 July 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ they raise the issue of new matter (see Note below);
  - (c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: \_\_\_\_\_.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: 2-17.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

8. ☒ The drawing correction filed on 02 July 2004 is a) ☐ approved or b) ☒ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☒ Other: With respect to the drawing corrections, see Note supra.

*K. M. Reichle*  
Karin M. Reichle  
Primary Examiner  
Art Unit: 3761

Continuation of 2. NOTE: the proposed amendment raises new issues that would require further consideration and/or search in that the proposed new independent claims, i.e. 15-17, no longer require front end portions of the transversely opposite sides being closer to the front waist region than the rear end portions yet include the limitations of dependent claims 15-17, respectively. The claims also no longer require the combinations of claims 3 and 6-14. Furthermore Applicants arguments with regard to Rajala are narrower than the prior art rejection set forth in the FINAL which relied on "portions already cited and claims" with regard to claims 15-17, not just col. 11, lines 26-62 of Rajala as argued, and thus col. 11, line 63-col. 12, line 46, and thereby col. 12, lines 18-24 which teach that the portion 48B is under substantially no elongation while the portions 48A and 48c are elongated up to about 300%, i.e. the tensile stress, i.e. the stretching or extension stress, of the portions 48A and C are greater than then that of 48B. Since the specification amendments making such commensurate with the proposed drawing changes have not been entered, the drawings are not approved. Applicants remarks bridging pages 17-18 have been noted but are deemed nonpersuasive because such are not commensurate with the claim language as originally filed nor as presently exists, e.g. the present claim language does not claim that certain portions of the elastic members do not extend in a circular arc whereas the original claims required the elastic members, not merely a particular portion thereof, extend in a circular arc. Note also, e.g., page 4, first full paragraph, and page 10, first two full paragraphs, as originally filed.